

### § 845.303

which he or she should have known to be material; or

(3) Whether he or she accepted a payment that he or she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by OPM or a Federal agency may mitigate against finding fault if one or more of these factors contributed to his or her submission of an incorrect statement, a statement that did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

### § 845.303 Equity and good conscience.

Recovery is against equity and good conscience when—

(a) It would cause financial hardship to the person from whom it is sought;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

### § 845.304 Financial hardship.

Financial hardship may be deemed to exist in, but not limited to, those situations when the annuitant from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(a) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(1) The individual's financial ability to pay at the time collection is scheduled to be made.

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the annuitant.

(b) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness. Rather primary emphasis will be placed upon the annuitant's liquid as-

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sets and current income in making such determinations.

### § 845.305 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, support expenses for which the annuitant is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

### § 845.306 Waiver precluded.

Waiver of an overpayment cannot be granted when—

(a) The overpayment was obtained by fraud; or

(b) The overpayment was made to an estate.

### § 845.307 Burdens of proof.

(a) *Burden of OPM.* The Associate Director must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of annuitant.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment.

## Subpart D—Agency Requests to OPM for Recovery of a Debt From the Civil Service Retirement Fund

### § 845.401 Purpose.

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Fund. This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

### § 845.402 Scope.

This subpart applies to agencies and debtors, as defined by § 845.403.

### § 845.403 Definitions.

In this subpart—

*Act* means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS).

*Administrative offset* means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

*Agency* means—

(a) An Executive agency as defined in §105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department, as defined in §102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in §610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal Government.

*Annuitant* means an annuitant as defined in §8401(2) of title 5, United States Code, or a survivor as defined in §8401(28) of title 5, United States Code.

*Annuity* means the monthly benefit of indefinite duration payable to an annuitant or survivor annuitant.

*Compromise* has the same meaning as in 4 CFR part 103.

*Consent* means the debtor has agreed in writing to administrative offset after receiving notice of all rights under 31 U.S.C. 3716 and this subpart.

*Creditor agency* means the agency to which the debt is owed.

*Debt* means an amount owed to the United States on account of loans insured or guaranteed by the United States, and other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, forfeitures, etc.

*Debt claim* means an agency request for recovery of a debt in a form approved by OPM.

*Debtor* means a person who owes a debt, including an employee, former employee, Member, former Member, or the survivor of one of these individuals.

*Employee* has the same meaning as in section 8401(11) of title 5, United States Code, and includes reemployed annuitants and employees of the U.S. Postal Service.

*Fraud claim* means any debt designated by the Attorney General (or designee) as involving an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim.

*Individual Retirement Record* means the record of retirement contributions that must be maintained under §841.504 of this chapter.

*Lump-sum credit* has the same meaning as in section 8401(19) of title 5, United States Code.

*Member* has the same meaning as in section 8401(20) of title 5, United States Code.

*Net annuity* means annuity after excluding amounts required by law to be deducted.

*Paying agency* means the agency that employs the debtor and authorizes the disbursement of his or her current pay account.

*Refund* means the payment of a lump-sum credit to an individual who meets all requirements for payment and files application for it.

#### **§ 845.404 Conditions for requesting an offset.**

An agency may request that money payable from the Fund be offset to recover any valid debt due the United States when all of the following conditions are met:

(a) The debtor failed to pay all of the debt on demand, or the creditor agency has collected as much as possible from payments due the debtor from the paying agency; and

(b) The creditor agency sends a debt claim to OPM (under §845.405(b) (1), (2), (3) or (4), as appropriate) after doing one of the following:

(1) Obtaining a court judgment for the amount of the debt;

(2) Following the procedures required by 31 U.S.C. 3716 and 4 CFR 102.4;

(3) Following the procedures required by 5 U.S.C. 5514 and subpart K of part 550 of this chapter; or

(4) Following the procedures agreed upon by the creditor agency and OPM,